

Message Text

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ACTION EUR-12

INFO OCT-01 ISO-00 CIAE-00 DODE-00 PM-05 H-01 INR-10
L-03 NSAE-00 PA-01 SP-02 SS-15 NSCE-00 SSO-00
ICAE-00 INRE-00 MCT-02 SY-05 CAB-02 COME-00
DOTE-00 EB-08 FAA-00 IO-13 HA-05 /085 W
-----047690 311729Z /42

O 311656Z AUG 78
FM AMEMBASSY BERLIN
TO SECSTATE WASHDC IMMEDIATE 8107
INFO AMEMBASSY BONN
AMEMBASSY WARSAW
AMEMBASSY MOSCOW
AMEMBASSY PARIS
AMEMBASSY LONDON
USMISSION USBERLIN
USCINCEUR VAIHINGEN GER
CINCUSAREUR HEIDELBERG GER
USAFE RAMSTEIN GER
USELMLO BEL

C O N F I D E N T I A L SECTION 01 OF 02 BERLIN 05696

E.O. 11652: GDS
TAGS: PINS, WB, PL, GE, BQG
SUBJECT: JURISDICTIONAL ASPECTS OF HIJACKED POLISH
AIRCRAFT

REF: (A) STATE 221435 (B) USBER 2061 (C) USBER 2062
(D) BONN 15831

1. WE APPRECIATE THE COMPLEXITIES OF THE ISSUES INVOLVED
IN THE QUESTION OF JURISDICTION FOR THE LOT HIJACKER, AND
OFFER THE FOLLOWING FROM AN EAST BERLIN PERSPECTIVE. WE
THINK THERE ARE TWO ASPECTS INVOLVED IN THE QUESTION OF
JURISDICTION OF THE GDR CITIZEN WHO HIJACKED THE PLANE,
AS FAR AS WE ARE CONCERNED. ONE RELATES TO THE IMPACT
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THIS CAN HAVE ON THE DEVELOPMENT OF US/GDR RELATIONS AND
THE IMPLEMENTATION OF OUR GOALS AND OBJECTIVES WITH RESPECT
TO THE GDR AND, SECONDLY, THE POSSIBLE IMPACT IT COULD
HAVE ON HOW THE GDR AND/OR THE SOVIETS HANDLE IN THE
FUTURE THE QUESTION OF AN AMERICAN AIRCRAFT DOWNED IN EAST
BERLIN OR THE GDR. FRG-GDR RELATIONS AND THE BERLIN
LEGAL REGIME ARE, OF COURSE, OTHER ELEMENTS IN THE PICTURE.

AN IMPORTANT ADDITIONAL CONSIDERATION IS OUR GENERAL CONCERN THAT EFFECTIVE MEASURES BE TAKEN TO DEMONSTRATE THAT WE TAKE SERIOUSLY THE MATTER OF HIJACKING-TERRORISM AND THE NEED TO COMBAT IT.

2. IN TERMS OF OUR RELATIONS WITH THE GDR, THERE WOULD APPEAR TO BE THREE OPTIONS WITH RESPECT TO THE HIJACKER: (1) TO TURN HIM OVER TO GDR AUTHORITIES (2) TURN HIM OVER TO POLISH AUTHORITIES, OR (3) TO TRY HIM IN BERLIN UNDER WEST BERLIN JURISDICTION. ANOTHER ALTERNATIVE WOULD BE TO TRY HIM IN AN AMERICAN MILITARY COURT, WHICH WE THINK IS HIGHLY UNDESIRABLE. WE NOTE THAT UP UNTIL NOW THE GDR HAS NOT SOUGHT TO INTRUDE ITSELF DIRECTLY INTO THE MATTER OF THE RETURN OF THE HIJACKER. THERE IS, OF COURSE, THE LETTER FROM AMBASSADOR ABRASIMOV TO AMBASSADOR STOESEL "ON A PERSONAL BASIS" WHICH STATES THE CRIMINAL "WILL BE GIVEN TO THE GDR AUTHORITIES". (THIS WOULD NOT APPEAR TO HAVE BEEN COORDINATED WITH POLISH AUTHORITIES.) THERE IS ALSO THE BRIEF GDR STATEMENT IN THE PRESS AUGUST 31 PROTESTING TO THE WEST BERLIN SENATE ABOUT THE MISTREATMENT OF THE GDR CITIZENS ON THE PLANE WHICH MAKES NO DIRECT DEMAND FOR THE RETURN OF THE HIJACKER. THEREFORE, AT LEAST AT THIS STAGE OF DEVELOPMENTS, THERE IS NO APPARENT DETERMINATION ON THE PART OF THE GDR TO HAVE THE HIJACKING BECOME A DIRECT ASPECT OF US/GDR RELATIONS ALTHOUGH THE ABRASIMOV LETTER WAS UNDOUBTEDLY CLEARED CONFIDENTIAL

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WITH THE GDR. THERE IS NO DOUBT IN OUR MINDS THAT THE REGIME WOULD LOOK ON OUR TURNING OVER THE HIJACKER TO IT AS AN IMPORTANT GESTURE TO IMPROVE RELATIONS. IT WOULD ALSO BE A STRONG SIGNAL TO THE REST OF THE WORLD THAT WE INTEND TO TAKE VIGOROUS ACTION TO COUNTER INTERNATIONAL TERRORISM AND HIJACKING.

3. WE SEE NO REASON TO BURDEN OUR RELATIONS UNNECESSARILY WITH THE GDR IF WE CAN TAKE ACTIONS WITH RESPECT TO THE HIJACKER THAT DEMONSTRATE OUR SERIOUSNESS AND INTEND TO IMPLEMENT THE BONN HIJACKING DECLARATION AND THE HAGUE/MONTREAL CONVENTIONS, OF WHICH THE GDR IS ALSO A SIGNATORY. THIS COULD BE DONE, IN OUR VIEW, BY TRYING THE HIJACKER IN WEST BERLIN UNDER US OR WEST BERLIN JURISDICTION. WHILE DOING SO UNDER GERMAN JURISDICTION MIGHT MAKE THE FRG UNCOMFORTABLE, WE THINK THE EXISTING LEGISLATION PROVIDES THE APPROPRIATE AUTHORITY AND RESPONSIBILITY FOR IT TO DO SO. WHILE THIS APPROACH WILL NOT BE TOO PALATABLE EITHER TO THE EAST GERMANS OR THE WEST GERMANS, WE TEND TO DOUBT THAT IT WOULD SERIOUSLY IMPAIR THE ONGOING NEGOTIATIONS BETWEEN THE TWO GOVERNMENTS BECAUSE OF THE MORE IMPORTANT POLITICAL

AND ECONOMIC CONSIDERATIONS INVOLVED IN THESE NEGOTIATIONS.

4. OUR INITIAL REACTION TO THE IMPLIED THREAT IN ABRASIMOV'S LETTER CONCERNING POSSIBLE GDR AND/OR SOVIET TREATMENT OF A DOWNED AMERICAN AIRCRAFT IS THAT WHILE IT MUST BE LOOKED AT SERIOUSLY, WE DOUBT THAT EITHER THE GDR OR THE SOVIETS WOULD WISH TO APPEAR IN THE EYES OF PUBLIC OPINION TO BE OBSTRUCTIONIST WITH RESPECT TO A CRASH

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C O N F I D E N T I A L SECTION 02 OF 02 BERLIN 05696

INVOLVING CASUALTIES. APART FROM NOT WANTING TO APPEAR INDIFFERENT TO THE TRAGEDY OF AN AIRPLANE CRASH, IT SEEMS TO US THE SOVIETS AND/OR THE GDR HAVE LITTLE ALTERNATIVE BUT TO TURN EITHER TO US AUTHORITIES IN WEST BERLIN OR TO THE EMBASSY HERE IN SUCH CASES AND, AS ADDRESSEES ARE AWARE, WE HAVE SUGGESTED THAT WE THINK THE EMBASSY SHOULD BE PREPARED ON AN IMMEDIATE BASIS AND UNDER THE UMBRELLA OF US AUTHORITIES IN BERLIN TO MOVE IMMEDIATELY TO ASSUME RESPONSIBILITY FOR US AIRCRAFT DOWNED IN EAST BERLIN OR THE GDR.

5. IN SUMMARY, WE ARE OF THE VIEW THAT THE JURISDICTION
ASPECT OF THE HIJACKED COULD BEST BE HANDLED BY TURNING
THE HIJACKER OVER TO WEST BERLIN AUTHORITIES WHICH WOULD
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DEMONSTRATE OUR COMPLIANCE WITH THE BONN DECLARATION
AND APPROPRIATE INTERNATIONAL CONVENTIONS, AND WHICH
WOULD DO THE LEAST DAMAGE TO OUR RELATIONS WITH THE
GDR. BOLEN

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